

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.9559 OF 2004
WITH
WRIT PETITION NO.9560 OF 2004
AND
WRIT PETITION NO.9561 OF 2004

Ajit Shripath Oak,
Age 45, Indian, adult,
inhabitant of Bombay through
guardian or next friend,
being his cousin Shri Dilip
Kashinath Oak, residing
at Rukshmani Villa,
145, Shivaji Park, Dilip
Gupta Marg, Mahim,
Mumbai-400 016 and not
at Plot No.74/B, 743
Parsi Colony, Road No.6,
Dadar, Mumbai-400 014.

.... Petitioner

- Versus -

1. D.D. Udeshi
2. K.D. Udeshi
3. J.D. Udeshi
4. R.D. Udeshi
5. Mrs. Bharat H. Ashar

owners and landlords of
Rukshmani Villa, 145,
Shivaji Park, Dilip Gupta
Marg, Mahim, Mumbai-400 016
having their address at
Shanti Apartments,
98, Walkeshwar Road,
Mumbai-400 006.

.... Respondents

Shri S. Shinghrani for the Petitioner.

Shri A.K. Abhyankar with Ms Mamata Panda
i/b M/s. Kiran Jain & Co. for the
Respondent Nos.1 to 5.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 07, 2004

ORAL JUDGMENT:

1. Rule. By consent, the rule is made returnable forthwith.

2. All these petitions arise from a common judgment passed by the trial Court as well as by the lower Appellate Court and the revisional Court and they were heard together and are being disposed of by this common judgment.

3. A civil suit bearing R.A.E. Suit No.492 of 1990 came to be instituted by the respondents against the petitioner on 8-1-1990 which was decreed on 6-11-2000, whereby there is the decree for eviction of the petitioner on the ground of bona fide need of the premises for the respondents as well as on the ground of non-user of the premises by the petitioner. A public notice came to be issued regarding the said decree on 22-12-2000 which was followed by execution proceedings initiated by the respondents being Misc. Notice No.6 of 2001. The said execution proceedings were sought to be contested by the petitioner by filing reply through his

next friend on 6-3-2002. Rejoinder and sur-rejoinder came to be filed on 20-3-2002 and 3-4-2002 respectively. Simultaneously, proceedings were initiated in the form of Misc. Notice of Motion No.349 of 2002 by the petitioner through the next friend on 24-4-2002 and the said proceedings were for appointment of guardian for the petitioner. Same were contested by the respondents by filing reply on 31-5-2002, however, sought to be justified in rejoinder dated 10-6-2002 by the petitioner through his next friend.

4. At the same time, by way of abundant caution the petitioner filed appeal against the decree dated 6-11-2000. The same was filed on 4-7-2002. During the pendency of the proceedings in Misc. Notice No.6 of 2001, the respondents also took out Misc. Notice No.380 of 2002 seeking possession of the suit premises during the pendency of the proceedings in the Misc. Notice No.6 of 2001. By a common order, the trial Court made the Misc. Notice No.6 of 2001 absolute while dismissing the Misc. Notice of Motion No.349 of 2002 and discharged the Misc. Notice No.380 of 2002. The matters were carried in revision applications, however, in relation to the judgment in Misc. Notice No.6 of 2001, it was converted into an appeal during the pendency of the revision. All the proceedings came to be disposed of by the lower Appellate Court and the

revisional Court by a common judgment and order dated 8-10-2004. Hence the present petitions.

5. The grievance of the petitioner is that inspite of the petitioner being admittedly of unsound mind, the suit was initiated and the decree was obtained by the respondents and therefore the same is a nullity and in order to bring the said fact to the notice of the executing Court Misc. Notice of Motion No.349 of 2002 was taken out to enable the petitioner to be represented by the guardian on the ground that the petitioner had continued to be of unsound mind. The contention of the petitioner is that in support of the case of the petitioner about the unsoundness of his mind, he had produced medical certificates. However, the Court below ignoring those medical certificates as well as failing to exercise the powers under Order 32, Rule 15 of the Code of Civil Procedure, discharged the said Misc. Notice of Motion No.349 of 2002 and illegally made the Misc. Notice No.6 of 2001 absolute. It is his further contention that no opportunity was granted to the petitioner to lead evidence in support of his contention regarding the unsoundness of his mind and therefore the impugned orders are bad in law. Reliance is sought to be placed in the decisions in the matter of **P.P.Ar.Rm.Sp. Ramanathan Chettiar v. A.R.R.M. Somasundram Chettiar**, reported in AIR 1941 Madras 505,

Raj Kumar v. Rameshchand & Ors., reported in JT 1999 (9) SC 102, **Duvvuri Rami Reddi v. Duvvudu Papi Reddi and others**, reported in AIR 1963 Andhra Pradesh 160 and **Tirtha Pradhan and others v. Balabhadra Pradhan and another**, reported in AIR 1993 Orissa 50 in support of the contention sought to be raised on behalf of the petitioner. The learned Advocate for the respondents, on the other hand, submitted that the Court below having considered the lunacy proceedings which were sought to be initiated under the Indian Lunacy Act, 1912 were disposed of by discharging the guardian appointed for the petitioner by order dated 10-11-1983 and there being no medical evidence produced by the petitioner regarding his claim regarding unsoundness of mind, no fault can be found with the impugned orders dismissing the objections which were sought to be raised on the ground of alleged unsoundness of the mind of the petitioner. According to the respondents, the Courts below have not committed any error in exercise of the jurisdiction nor have failed in complying with their obligations under the statutory provisions while passing the impugned orders and therefore the same do not warrant interference.

6. The fact that the lunacy proceedings under the Indian Lunacy Act were concluded with a specific order of discharge of the guardian on 10-11-1983 is not in dispute. It is also a matter of record that in the

suit, the petitioner was duly served and he had even filed the written statement which did not disclose any objection for proceeding against him on the ground of alleged lunacy nor any point in that regard was raised nor any next friend had sought intervention in the suit on behalf of the petitioner. The order dated 10-11-1983 apparently discloses that the petitioner had ceased to suffer from mental disorder and therefore could defend himself in the suit. Even the petitioner having approached the Court through his next friend in Misc. Notice of Motion No.349 of 2002 though sought to produce certain certificates, stated to be the medical certificates, not even an attempt was made either to file affidavit of any doctor nor there was any attempt made to lead any oral evidence in support of the claim of the petitioner regarding his unsoundness of mind or to prove the said certificates to have been issued by the doctors after examining the petitioner and that the same disclose true state of affairs. As against this, the specific order dated 10-11-1983 discloses that the proceedings were disposed of in accordance with the provisions of Section 60(2) of the Indian Lunacy Act and subsequent thereto no materials were available on record before the trial Court even to suspect that the petitioner had anytime thereafter had suffered or suffers from mental illness or that he was suffering from mental illness during the period from 1990 to

November, 2000 i.e. during the period when the suit was filed and disposed of by the trial Court or any part thereof.

7. It was strenuously argued on behalf of the petitioner that there was no opportunity granted to the petitioner to lead evidence in support of his contention regarding mental illness and that the trial Court failed in complying with its obligation under Order 32, Rule 15 of the C.P.C. However, no attempts were made by the petitioner's next friend to lead any evidence, either in the form of affidavit or oral evidence in support of the claim of the petitioner. Once the petitioner's next friend himself has failed to produce the necessary evidence in that regard, the Courts below cannot be blamed of having not given opportunity to the petitioner to lead evidence. As regards non-compliance of the obligation under Order 32, Rule 15 of the C.P.C., once the records disclose a specific order under Section 60 of the Indian Lunacy Act dated 10-11-1983 confirming that the petitioner was no more of unsound mind from the year 1983, and there being no material placed on record to even suspect that the petitioner had been suffering from mental illness subsequent to the said order, the Courts below cannot be held to have failed in their obligation under Order 32, Rule 15 of the C.P.C.

8. Attention was also sought to be drawn to certain documents stated to be medical prescriptions issued for treatment of the petitioner. The prescription, which is annexed to the Writ Petition No.9560 of 2004 as annexure "K", appears to have been issued by one Dr. Rajendra Barve. Bare reading of the said prescription discloses that undoubtedly it has been issued for a patient called "Ajit". It, however, nowhere discloses that the said patient is the petitioner himself. Merely because the first name of the petitioner happens to be "Ajit", that by itself would not disclose or establish that the said prescription refers to the alleged treatment to the petitioner and the petitioner alone and not to any other person by name "Ajit". It is also to be noted that the prescription which was issued in the month of August, 1983 by Dr. A.P. Patkar, a copy of which is to be found as annexure "I" to the said petition, refers to various medicines which are apparently different from those which were prescribed under the prescription stated to have been issued by Dr. Rajendra Barve. Undisputedly, no care has been taken to disclose whether the ingredients of the medicines which were stated to have been prescribed under the prescription of 1983, issued by Dr. A.P. Patkar and the prescription of 1989, issued by Dr. Rajendra Barve were same or that the same were prescribed as treatment for similar type of disease. In other words, there is nothing on record

to establish a link between the prescription of 1989 with the petitioner or the illness alleged to have been suffered by the petitioner after 1983.

9. The decision in **Ramanathan Chettiar's** case (supra) was bearing in mind the applicability of the provisions of the Madras Agriculturists' Relief Act to the said case and the benefits available to the parties in occupation of the premises and in that regard necessity to hold a detail judicial enquiry to ascertain whether the person was of mentally unsound mind. It appears that there was no opportunity granted to the parties to lead evidence in the said case. In fact the observations by the Madras High Court is that there was no enquiry of the kind contemplated by law in the matter and therefore there was irregular exercise of its jurisdiction by the Court below. In the case in hand, in the facts and circumstances disclosed from the records and referred to hereinabove, as already held, it cannot be said that there was any irregularity in exercise of jurisdiction.

10. The decision of the Apex Court in **Raj Kumar's** case (supra) was on a totally different issue. There the point was whether compliance of the provisions of the Mental Health Act, 1987 were attracted or not, in cases where the provisions of Order 37, Rules 1 and 15 were

complied with. That is not the point in issue in the case in hand.

11. In **Duvvuri Rami Reddi's** case (supra), the issue involved was whether the provisions of Order 32, Rule 15 are applicable to unsound person so also to the person of weak mind and in the facts and circumstances of the case, the Court, ignoring the earlier order requiring necessary opportunity to be given to the parties to lead evidence on the aspect of weakness of the mind, itself had examined the plaintiff in the Court, and concluded that he did not appear to be an idiot or an infirm person incapable of managing his own affairs and, therefore, the said order was set aside.

12. The decision in **Tirtha Pradhan's** case (supra), rather than assisting the petitioner, justifies the impugned order. In the said case, the opposite party was of 90 years old and was alleged to be physically and mentally infirm. On such allegation, the Court allowed the party to be represented by the guardian by passing the order solely on the basis of the medical report given by the Sub-Divisional Medical Officer without examining such person and without submitting such doctor to be cross-examined in the matter. There was no examination of any witness nor any enquiry as to whether the person was really mentally infirm in that context.

The High Court of Orissa held that the Court below had failed to exercise the jurisdiction judicially and therefore the order was set aside.

13. For the reasons stated above, therefore, I do not find any fault with the impugned orders passed by the Courts below, nor they disclose any jurisdictional error, nor any arbitrary exercise of jurisdiction, nor breach of any law.

14. For the reasons stated above, therefore, there being no case made out for interference in the impugned order in exercise of the writ jurisdiction under Article 227 of the Constitution of India, the petitions fail and are dismissed and the rule is discharged with no order as to costs.

15. At this stage, the learned Advocate for the petitioner prays for stay of execution of the decree of eviction passed against the petitioner. The prayer for stay is objected to by the learned Advocate for the respondents on the ground that already the Receiver is in possession of the premises for the last many years. Indeed the facts disclose that the Receiver has already taken the possession. Therefore, I do not find any justification for staying the execution of the eviction order. Hence the prayer for stay of the execution is

rejected.
